

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2021-89-E
DOCKET NO. 2021-90-E

IN RE:)	
Duke Energy Carolinas, LLC's and)	CAROLINAS CLEAN ENERGY
Duke Energy Progress, LLC's)	BUSINESS ASSOCIATION'S
2021 Avoided Cost Proceeding)	RESPONSIVE COMMENTS
Pursuant to S.C. Code Ann.)	
Section 58-41-20(A))	

INTRODUCTION

These Comments are filed on behalf of the Carolinas Clean Energy Business Association ("CCEBA") and are in response to the Chief Hearing Officer's Directive No. 2021-105-H, dated July 22, 2021, in the above referenced Dockets.

RESPONSIVE COMMENTS

CCEBA, Intervenor in the above-referenced Dockets, opposes the relief sought in the Petition filed by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (hereinafter together as, "Duke"), to allow discussions between counsel and witness, between that witness's testimony on direct and the witness's return to the stand for rebuttal testimony. While CCEBA agrees that case law and other authorities are not clear on this issue, CCEBA files this response to note its objection to the relief sought by Duke in its Petition for three reasons, set forth below.

First, Duke's argument in support of its Petition focuses on case law that speaks to the importance of the preservation of the attorney-client relationship and the Due Process rights of civil litigants. CCEBA does not disagree with the importance of those protections or the case law cited by Duke to support them. However, CCEBA disagrees that the issue before the Commission is related to the attorney-client relationship or the client's Due Process rights. No part of the Commission's order in the proceeding on Duke's Integrated Resource Plan ("IRP") prevented Duke's counsel from contacting or receiving instruction from their client. Rather, all parties to the docket were instructed that counsel could not consult with a *witness* who was under oath and whose testimony had not been completed. CCEBA submits that this is a material distinction that distinguishes this matter from the cases submitted by Duke, and the Chairman's order preserved the integrity of the hearing and the IRP process.

Second, CCEBA is concerned that an order granting the relief sought in Duke's Petition will be used as precedential authority to reinforce the practice of splitting the live direct and rebuttal testimony of witnesses, despite the prior submission of written direct and rebuttal testimony by all parties prior to the hearing. This practice risks the prolongation of in-person hearings to the detriment of the resources of the Commission and the parties. To the extent that the Commission's prior ruling against consultations with witnesses who are still under oath disincentivizes such bifurcation of testimony, CCEBA supports that ruling.

Third, South Carolina law is clear that a presiding judge or officer has discretion to control proceedings before his or her tribunal. "Trial judges in South Carolina, as elsewhere, are allowed a wide discretion in the trial of cases. This is as it should be because a trial judge experiences 'a feel of the case' which oftentimes may not be detected from a cold printed record"" State v. Perry, 299 SE 2d 324, 494 (1983). The Chairman's ruling in the Duke IRP proceeding was consistent with that longstanding inherent authority. Any ruling on Duke's Petition for Declaratory Order in these Dockets should preserve the Commission's authority to enforce standards of conduct and procedure in future dockets and hearings. In filing this response, CCEBA specifically reserves its right to object to future instances of communication between attorneys and witnesses who are still under oath.

Respectfully Submitted,

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*As Counsel for Intervenor, Carolinas Clean Energy
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July 26, 2021